

The Supreme Court of the United States has held: “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by

virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

“The district court must have a ‘substantial reason’ to deny a request for leave to amend.” *Lyn-Lea Travel Corp. v. American Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002). “Where an amendment would do no more than clarify legal theories or make technical corrections, we have consistently held that delay, without a showing of prejudice, is not a sufficient ground for denying the motion.” *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999). In sum, a requested leave to amend should be “freely given” in the absence of undue delay, bad faith or dilatory motive, undue prejudice, futility, or other compelling reason to deny the proposed amendments.

In the case at bar, there is a complete absence of undue delay, bad faith or dilatory motive, undue prejudice, futility, or other compelling reason to deny the proposed amendments.

Allowing the amendments will more clearly delineate Plaintiff’s allegations. The clarification of these issues should ultimately prove helpful to Defendants and this Court. The proposed amendment is timely filed. This *Motion* should be allowed since no compelling reason exists to deny the request.

CONCLUSION

It is respectfully submitted for the reasons delineated above that the Court grant this *Motion* and allow Plaintiff to file the *Second Amended Complaint*.

Respectfully submitted, this the 17th day of November, 2009.

/s/ David G. Schiller

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S PLAINTIFF'S MOTION FOR LEAVE TO FILE A *SECOND AMENDED COMPLAINT*** on the following counsel via the CM/ECF system:

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This the 17th day of November, 2009.

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